Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 964 of 2001
(Old No. 104 of 1984)

1. Smt. Keshavi Pant
W/o Late Sri Liladhar
2. Shri Bipin Chandra Pant
minor son of Late Sri Liladhar Pant
through his natural guardian, mother
Both above R/o Village Agaon
Patti Askote, Tehsil Didihat
District Pithroragarh……..Appellants

Vs.

1. Sri Praduman Singh
S/o Shri Kunden Singh Garbyal
R/o Dharchula
District Pithoragarh.
2. The National Insurance Co. Ltd
Bareilly.
3. Shri Bahadur Chand
S/o Shri Tara Chand
R/o Village Paleti
Patti Mali
Tehsil Didihat
District Pithoragarh. …….Respondents

Shri C.D. Bahuguna, learned counsel for the appellants.
Shri G.B. Pande and Shri Prabhat Pande, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 110-D of Motor Vehicles Act, 1939, is directed against the judgment/award, passed on 22.10.1983 by Motor Accident Claims Tribunal/ District Judge, Pithoragarh, whereby the claim petition of appellants is dismissed.

2. Brief facts of the case are that appellants daughter Km. Tanuja, aged about 10 years was a student when she died in an accident which took place on 25.04.1981, at about 1:30 P.M., due to the rash and negligent driving of the driver of the truck Registration No. U.S.Z. 4262. The truck was owned by respondent No. 1 – Shri Praduman Singh and insured with respondent No. 2- National Insurance Company at the time of the accident. The said truck was on its way from Lohaghat to Pithoragarh, on the fateful day. The driver of the vehicle was Shri Bahadur Chand (Respondent No. 3), who was rash and negligent in driving the aforesaid vehicle. The mother and brother of the child (deceased), moved a claim petition, before Motor Accident Claims Tribunal, under Section 110 A of Motor Vehicles Act, 1939, for an amount of compensation to the tume of Rs. 20,000/- (rupees twenty thousand).

3. Respondent No. 1- Shri Praduman Singh, filed written statement, pleading that the accident was caused due to the failure of brakes and there was no rash and negligent driving on the part of the driver. It was further pleaded that the owner had not authorized the driver to pick up any passenger in the truck. Respondent No. 2- National Insurance Company also contested the claim and filed its separate written statement, pleading that the truck, registration No. USZ 4262 was a goods carrier and by allowing the passengers to board it has violated, the condition of the policy of the insurance as such, the answering respondent is not liable to any compensation. Respondent No. 3, Shri Bahadur Chand did not contested the claim petition except giving his statement on oath in evidence.

4. Following issues were framed by the Motor Accident Claims Tribunal:-

(1) Whether the accident in which Ms. Tanuja died, took place due to the rash and negligent driving on the part of the driver of the truck or was it due to the sudden failure of brakes, as alleged in the written statement of defendant No. 1?

(2) To what amount of compensation, if any is the claimant entitled and from which of the opposite parties?

(3) Whether the deceased at the time of the deceased was travelling in the truck, as a passenger, or was she a pedestrian?

After recording the evidence and hearing the parties, learned Motor Accident Claims Tribunal, held that the accident has taken place due to sudden failure of brakes and dismissed the claim petition on said ground.

5. Heard learned counsel for the parties. I have re-examined the entire evidence on record. On behalf of the claimant, eye-witness of the accident, P.W. 3, Ganesh Chand, has alleged that the driver of vehicle registration No. U.S.Z. 4262, was driving it with a high speed and got dashed the truck with the parapet then fell down in the khud. Learned tribunal wrongly disbelieved the eye-witness by appreciating the evidence like in the criminal case. The tribunal has rejected his evidence by saying that speed alone is not the conclusive prove of the negligence. In the opinion of this Court, the learned tribunal erred in law by rejecting the ocular version of the above witness, for the reason that in the hilly zigzag route, even in less speed, a driver can be said to be rash and negligent, if he is not cautious in driving the vehicle but in the present case, there

is clear evidence that driver was driving the vehicle in a high speed that too in a bend of hilly road. The tribunal has believed the statement of opposite party witness No. 1- Shri Bahadur Chand, who has admitted that accident had taken place but stated that it was due to the failure in the brakes. Opposite party witness No. 3- Shri Dhan Singh, Manager of Dharchula Transport Company, has stated that the truck registration No. U.S.Z. 4262 was mechanically got examined at Tanakpur on 24.04.1981 and only after it was got examined, the driver was permitted to start the journey. That being so, the evidence of O.P. witness No. 1- Shri Bahadur Chand, appears to be more suspicious that there was failure in the brakes. The Supreme Court in Sayeed Akbar Vs. State of Karnataka A.I.R. 1979 S.C. 1848, has expressed the view that if the cause of accident is unknown the maxim *'Res ipsa loquitur'* (things speaks for itself) may apply. Therefore, this Court is of the view that from the evidence on record and in the facts and circumstances of the case, it is amply proved that respondent No. 3, driver of the vehicle was rash and negligent in driving the truck, registration No. U.S.Z. 4262, at the time of the accident. Therefore finding of the tribunal on Issue No. 1 is reserved in favour of the claimants.

6. As to the amount of compensation sought by the claimant/appellant is a meager amount of Rs. 20,000/-. P.W. 1 Smt. Keshvi Devi, a widowed lady, mother of the deceased, as stated that she wanted to educate her daughter so that she may become a doctor. Though deceased was not a earning member but loss on account of shock and mental agony due to the death of the daughter, loss of love and affection, funeral expenses and notional income, which daughter would have spent in her

mother, cannot be said to be in terms of money, less than Rs. 20,000/-. As such, this Court is of the opinion that the amount of compensation, sought to the tune of Rs. 20,000 by the claimants, is reasonable amount, which the respondent No. 2- National Insurance Company is liable to pay. There is no dispute as to the fact that vehicle was insured with the National Insurance Company on the date of the accident. Accordingly, this Court gives its finding also on issue No. 2, in favour of the claimant/appellants.

7. In the written statement, respondent No. 1, has taken the plea that he had not authorized the driver to permit him to take the passengers and if the driver has violated the instructions, he is not liable to make any payment for it. On behalf of the Insurance Company, it is argued before this Court that since, the driver of the truck flouted the terms of the Insurance policy, as such, the insurance company was not liable to make any payment. From evidence on record, it is amply clear that the deceased was travelling in the truck with her father. In this regard, statement of O.P. W. No. 1- Shri Bahadur Chand is false that the deceased was traveling on foot. There was no occasion for the deceased to walk on the road at the place where the accident had taken place. As from the evidence on record, it is clear that she belonged to Village- Agaon, Patti- Askote, Tehsil – Didihat, District- Pithoragarh. As far as question of breach of term of policy is concerned in United India Insurance Company Vs. Lehru and others 2003 (3) S.C.C. 338, it has been held that third party insurance made compulsory by the legislature only with the object to compensate the innocent injured persons or relatives of the deceased persons in the accident. In other words, object of

such insurance is not to enrich the insurance company. The breach if any made by the driver or some other person, Insurance company cannot escape its liability. It can take defence of the breach only when the insured has committed the breach of the term of policy. As such it does not make any difference if the deceased was pedestrian or not. Issue No. 3 also stands decided accordingly.

8. In view of aforesaid discussion, this Court is of the opinion that the findings recorded against the claimants by the tribunal are liable to be reversed, as mentioned above, in this appeal. Accordingly, the appeal is allowed. The impugned claim petition stands allowed for a sum of Rs. 20,000/- with interest at the rate of 6% from the date of claim petition i.e. 22.10.1981 till the date of payment is made. This Court further directs that the payment shall be made by the insurance company within a period of one month from today, failing which it shall be liable to pay 9% interest throughout instead of 6%, awarded to the claimant. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 05.09.2005
Sweta

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Review Application No. 13 of 2006

In

Appeal from Order No. 964 of 2001

1. Smt. Keshavi Pant
   W/o Late Sri Liladhar
2. Shri Bipin Chandra Pant
   Minor son of Late Sri Liladhar Pant
   Through his natural guardian, mother
   Both above R/o Village Agaon
   Patti Askote, Tehsil Didihat
   District Pithoragarh

……..Appellants

Versus

1. Sri Praduman Singh
   S/o Shri Kunden Singh Garbyal
   R/o Dharchula, Distt. Pithoragarh.

2. The National Insurance Co. Ltd
   Bareilly.

3. Shri Bahadur Chand
   S/o Shri Tara Chand
   R/o Village Paleti, Patti Mali
   Tehsil Didihat, Distt. Pithoragarh.

…….Respondents

Shri C.D. Bahuguna, learned counsel for the appellants.
Shri D.S. Patni, Advocate for review applicant / respondent No. 2.

Hon'ble Prafulla C. Pant, J.

A delay condonation application has been filed alongwith the review application for condoning the delay in filing the present review application. The same is allowed. The delay is condoned for entertaining the review application.

2) Heard learned counsel for the parties on review application moved by review applicant / respondent No. 2

for review of the judgment and order passed by this Court on 05.09.2005 in Appeal From Order No. 964 of 2001.

3) By the aforesaid order, the claimant's appeal was allowed and compensation to the tune of Rs. 20,000/- with 6% interest thereon, was awarded in favour of the claimants. The claim petition has arisen out of the death of young child of 10 years in an accident which took place on 25.04.1981. The applicant, Insurance Company wants modification in the aforesaid order that it may be permitted to recover the amount of compensation from the owner of the vehicle involved in the said accident. In support of their contention, learned counsel for the applicant has drawn attention of this Court to the fact that in other two cases arisen due to the same accident, the Insurance Co. has been permitted to recover the amount from the owner of the vehicle in question. The said judgments were not referred at the time when the appeal was heard on merits. Both the cases referred are also of the Single Judge of this Court. There is no error apparent on the face of the record in the impugned judgment passed by this Court. As such, this Court is of the view that the order passed on 05.09.2005 needs no interference under the review jurisdiction.

3) Accordingly, the review application is rejected.

(Prafulla C. Pant, J.)

Dt: 24th March, 2006.
H. Negi